IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.MC.No. 2791 of 2007()

ST.180/2005 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE

.....

PETITIONER: ACCUSED:

MOHAMMED BASHEER, S/O. MOHAMMED,
MANJALANGADAN HOUSE, CHERPLACHERRY POST,
PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: STATE & COMPLAINANT:

---

1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. JAINLALIT KUMAR,
3B - MYEENAE APARTMENTS, CORPORATION OFFICE ROAD,
KOZHIKODE-32.

BY PUBLIC PROSECUTOR SRI.KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2791 of 2007

Dated this the 6th day of September 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The cheque is for an amount of Rs.33,500/- and is dated 01/12/2004. Prosecution was initiated as early as in 2005. The petitioner has not entered appearance so far. The petitioner had received summons from the court but on account of reasons beyond his control, it became impossible for him to appear before the learned Magistrate, it is submitted. His absence was not wilful; but was on account of reasons beyond his control.

2. According to the petitioner, he is absolutely innocent. The petitioner is willing to pay the cheque amount to the complainant along with reasonable interest. But the complainant, in his anxiety to vex and harass the petitioner, is not willing to compound the case. The matter hence drags on unnecessarily. The petitioner now wants to surrender before the learned Magistrate and seek regular bail. But he

apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 438 and/or 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. The learned counsel for the petitioner submits that to show his bonafides, the petitioner shall deposit the cheque amount with interest before the learned Magistrate within a period of fifteen days.

4. Having considered all the relevant inputs, I am persuaded to agree that directions under Section 438/482 Cr.P.C can be issued in favour of the petitioner. I am impressed by the offer made by the learned counsel for the petitioner to deposit an amount of Rs.45,000/- before the learned Magistrate to show his bona fides.

5. This petition is, in these circumstances, allowed. Following directions are issued under Section 438/482 Cr.P.C.

i) The petitioner shall surrender before the learned Magistrate at 11 a.m on 22/9/2007. Till then the non-bailable warrant issued against him shall not be executed.

ii) He shall be released on regular bail on condition that he deposits an amount of Rs.45,000/- (Rupees forty five thousand only) and executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

6. The learned Magistrate shall record the plea of the accused on the date of surrender and shall thereafter permit him to be represented by his counsel. Subsequent personal presence of the petitioner shall be insisted only if it is absolutely necessary for the further progress of the case. I record the submission of the learned counsel for the petitioner that if the complainant is willing to accept the said amount and compound the same, the entire amount can be released to the complainant forthwith.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007